



# STATE OF INDIANA

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April 16, 2009

William Nangle  
*The Times of Northwest Indiana*  
601 45<sup>th</sup> Street  
Munster, Indiana 46321

*Re: Formal Complaint 09-FC-81; Alleged Violation of the Access to Public Records Act by the City of East Chicago*

Dear Mr. Nangle:

This advisory opinion is in response to your formal complaint alleging the City of East Chicago ("City") violated the Access to Public Records Act ("APRA") (Ind. Code 5-14-3) by failing to respond to your request for access to records. It is my opinion the City violated the APRA by failing to respond to your repeated requests for access to records.

## BACKGROUND

You allege that the City has failed to respond to personal, telephone, electronic mail and written requests for access to and copies of records maintained by the City. You provide a copy of a "contact log," detailing the repeated attempts to obtain access to records from January 2009 until the time you filed the present complaint. You also include copies of correspondence and certified mail receipts. You requested priority status but did not allege any of the reasons for priority status listed in 62 IAC 1-1-3, so priority status was not granted.

My office sent a copy of the complaint to the City and invited the City to respond. To date my office has not received a response to the complaint.

## ANALYSIS

The public policy of the APRA states, "[p]roviding persons with information is an essential function of a representative government and an integral part of the routine duties of public officials and employees, whose duty it is to provide the information." I.C. § 5-14-3-1. The City is clearly a public agency for the purposes of the APRA. I.C. § 5-14-3-2(m). Accordingly, any person has the right to inspect and copy the public records of the City during regular business hours unless the public records are excepted from disclosure as confidential or otherwise nondisclosable under the APRA. I.C. § 5-14-3-3(a).

A request for records may be oral or written. I.C. §§ 5-14-3-3(a), 5-14-3-9(c). If the request is delivered by mail or facsimile and the agency does not respond to the request within seven days of receipt, the request is deemed denied. I.C. § 5-14-3-9(b). If the request is made by telephone or personal appearance in the office and the agency does not respond within twenty-four business hours of receipt, the request is deemed denied. I.C. § 5-14-3-9(a).

A response could be an acknowledgement that the request has been received and information regarding how or when the agency intends to comply. There are no prescribed timeframes when the records must be produced by a public agency. A public agency is required to regulate any material interference with the regular discharge of the functions or duties of the public agency or public employees. I.C. § 5-14-3-7(a). However, section 7 does not operate to deny to any person the rights secured by section 3 of the Access to Public Records Act. I.C. § 5-14-3-7(c). Former public access counselors and I have stated that records must be produced within a reasonable period of time, based on the facts and circumstances.

Here, *The Times* has made repeated requests to the City for copies of records maintained by the City. The materials you provide detail a number of different methods *The Times* has employed, including telephone calls, certified mail, and in person visits, among others. And the City has repeatedly failed to respond to you regarding the status of the requests or to provide you with access to the records. Further, the City failed to respond to the complaint, so I have no information regarding any justification the City might assert for the delay in providing access to the records. In my opinion, this pattern of unresponsiveness and nondisclosure is a clear violation of the spirit and letter of the Access to Public Records Act.

#### CONCLUSION

For the foregoing reasons, it is my opinion the City has violated the APRA by failing to respond to your repeated requests for access to records.

Best regards,



Heather Willis Neal  
Public Access Counselor

Cc: The Honorable George Pabey, City of East Chicago